

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Charlie Hartford	Team: Squad #16	CCRB Case #: 201707277	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Tuesday, 09/05/2017 11:45 PM	Location of Incident: § 87(2)(b)	Precinct: 40	18 Mo. SOL 3/5/2019	EO SOL 3/5/2019	
Date/Time CV Reported Wed, 09/06/2017 11:48 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 09/06/2017 11:48 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Jose Tejada	06150	960018	PSA 7
2. SGT Jose Caban	01324	929805	PSA 7

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Manolin Molina	27653	936051	PSA 7
2. POM Carlos Gomez	14919	955954	PSA 7

Officer(s)	Allegation	Investigator Recommendation
A.SGT Jose Caban	Force: Sergeant Jose Caban used physical force against § 87(2)(b)	
B.SGT Jose Caban	Force: Sergeant Jose Caban used physical force against § 87(2)(b)	
C.POM Jose Tejada	Abuse: Police Officer Jose Tejada stopped an individual.	
D.POM Jose Tejada	Abuse: Police Officer Jose Tejada frisked an individual.	
E.POM Jose Tejada	Abuse: Police Officer Jose Tejada searched an individual.	
F.POM Jose Tejada	Abuse: Police Officer Jose Tejada frisked an individual.	
G.POM Jose Tejada	Abuse: Police Officer Jose Tejada searched an individual.	

Case Summary

On September 6, 2017, § 87(2)(b) filed this complaint with the CCRB via telephone. On the same date, Sergeant Guy Louis-Jean of the 40th Precinct reported this incident to IAB under log number 17-35127. On September 14, 2017, § 87(2)(b) filed a complaint with the CCRB regarding this incident on § 87(2)(b)'s behalf via telephone.

On September 5, 2017 at approximately 11:45 p.m., in the vicinity of § 87(2)(b) in the Bronx, Sgt. Jose Caban, PO Manolin Molina, PO Jose Tejada and PO Carlos Gomez of PSA 7 approached § 87(2)(b) and an individual only known as § 87(2)(b) after they were observed in the Pontiac Playground after dusk. Sgt. Caban pushed § 87(2)(b) against a parked van (**Allegation A: Force**, § 87(2)(g) and punched him in the face (**Allegation B: Force**, § 87(2)(g). While this occurred, PO Tejada stopped § 87(2)(b) (**Allegation C: Abuse**, § 87(2)(g) conducted a frisk of § 87(2)(b)'s person (**Allegation D: Abuse**, § 87(2)(g) and searched § 87(2)(b)'s pockets (**Allegation E: Abuse**, § 87(2)(g). PO Tejada also allegedly frisked (**Allegation F: Abuse**, § 87(2)(g) and conducted a search of § 87(2)(b)'s bag (**Allegation G: Abuse**, § 87(2)(g).

This case contains video evidence, which can be found at Board Review 01. A transcription of this footage can be found at Board Review 02.

Findings and Recommendations

Allegation (A) Force: Sergeant Jose Caban used physical force against § 87(2)(b)

It is undisputed that § 87(2)(b) was inside the Pontiac Playground after dusk on the date of incident. It is also undisputed that § 87(2)(b) fled upon being approached by officers in the park, and that Sgt. Caban used physical force against § 87(2)(b). Video evidence obtained by the investigation depicts § 87(2)(b) being pushed into the side of a parked van by Sgt. Caban.

§ 87(2)(b) who was § 87(2)(b) years old on the date of incident, stated during his CCRB interview that on September 5, 2017, at approximately 11:45 p.m., § 87(2)(b) was sitting with five friends on a bench at the Pontiac Playground in the Bronx (Board Review 03). § 87(2)(b) primarily speaks Spanish and was interviewed with a Spanish-speaking investigator serving as translator. None of the civilians were holding any objects in their hands with the exception of § 87(2)(b) who was carrying four loose eggs. § 87(2)(b) stated that he obtained the eggs from one of his friends, who had previously bought a carton, and that he intended to bring them to his mother. § 87(2)(b) observed four officers approach the park in an unmarked police vehicle. The officers, Sgt. Caban, PO Tejada, PO Molina and PO Gomez of PSA 7, stopped in front of the park, and two officers exited. Two of § 87(2)(b)'s friends suggested that they leave the park and stated that they would be issued summonses for being in the park late at night. § 87(2)(b) was previously unaware that this was illegal. § 87(2)(b) and two friends, § 87(2)(b) and an individual known only as § 87(2)(b) proceeded to “walk quickly” to the § 87(2)(b) located at § 87(2)(b), approximately a block and a half away. § 87(2)(b) discarded the eggs he was carrying because he was concerned they would make him appear suspicious.

§ 87(2)(b) and his friends stayed inside the bodega for approximately two minutes before exiting. Approximately one minute later, they were approached by the same officers outside of the bodega. An officer, identified by the investigation as PO Tejada, told § 87(2)(b) to put his hands up, before an unidentified officer told § 87(2)(b) to lower his hands. § 87(2)(b) complied with both instructions. An officer identified by the investigation as Sgt. Caban then went behind § 87(2)(b) grabbed him, turned him around, and pushed him up against the side of a parked vehicle. Sgt. Caban did not issue any instructions to § 87(2)(b) prior to doing this. As Sgt. Caban was pushing against § 87(2)(b)'s back and head, § 87(2)(b) put his hands out to protect his face from being slammed against the parked vehicle. Other than doing this, § 87(2)(b) did not resist in any way or do anything else with his hands. During a follow up interview conducted at § 87(2)(b)'s apartment, § 87(2)(b) denied cursing or “lacking respect” with the officers during the encounter (Board Review 23).

§ 87(2)(b), § 87(2)(g)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b) The investigation was not able to obtain a statement from § 87(2)(b) (Board Review 11).

Sgt. Caban stated during his CCRB interview that on the date of incident, he and the other officers were driving slowly down Jackson Avenue in a black unmarked sedan observing activities in the area (Board Review 06). PO Gomez was driving the vehicle, while Sgt. Caban was sitting in the rear passenger seat on the right hand side. PO Tejada and PO Molina sat to the left and in front of Sgt. Caban, respectively. The officers were approached on the right side of Jackson Avenue by a Hispanic male of medium height and medium complexion in dark clothing, who stated that there were “large” individuals in the park across from East 149th Street who he believed had guns and drugs. Later in the interview, Sgt. Caban clarified that he was informed that these individuals were dealing drugs. The individual who provided this information only stated that the individuals in the park were male and did not provide descriptions. Sgt. Caban had never seen this individual before and never obtained his name during the interaction.

Sgt. Caban and the other officers proceed to drive by the park, at which time Sgt. Caban and other officers whom Sgt. Caban could not recall exited the vehicle. The individuals in the park began to run, and the officers re-entered the vehicle to engage in a pursuit. One individual in particular, identified by the investigation as § 87(2)(b) stood out to Sgt. Caban because of his red shirt. Sgt. Caban stated during his interview, “The only thing that stood out to me was the red hoodie. I fixated on that because it was easiest to see.” Sgt. Caban later clarified that § 87(2)(b) also stood out because he was very tall. The officers pursued § 87(2)(b) to the § 87(2)(b) located at § 87(2)(b), only losing sight of § 87(2)(b) momentarily as he passed behind a parked car.

Sgt. Caban then exited the vehicle and approached § 87(2)(b) When asked what he observed as he approached § 87(2)(b) Sgt. Caban stated, “Just his presence.” § 87(2)(b) was not saying anything at the time, and Sgt. Caban did not say anything as he approached. Sgt. Caban did not recall other officers issuing verbal commands to § 87(2)(b)

§ 87(2)(b) during the interaction. § 87(2)(b) had his hands in the front pocket of his red hooded jacket as Sgt. Caban approached. Sgt. Caban did not see any specific shapes inside § 87(2)(b)'s pockets. Sgt. Caban did not hear the other individuals present make any statements as Sgt. Caban approached. Sgt. Caban did not notice § 87(2)(b)'s demeanor as he approached. Aside from the tip provided by the anonymous informant and Sgt. Caban's personal observation that § 87(2)(b) was in the park after dusk, there were no additional factors leading Sgt. Caban to believe § 87(2)(b) had committed any crimes. Sgt. Caban had not received any additional information in this regard; however, Sgt. Caban stated that it is not normal for individuals to flee when they are approached in a park after dusk, and that this unusual response raised his level of suspicion. There was no discussion among the officers with regard to approaching the individuals.

Sgt. Caban grabbed § 87(2)(b) by both his left arm, removed § 87(2)(b)'s left hand from his pocket, and began leading him towards the van so he could be frisked. § 87(2)(b) resisted by attempting to move in the opposite direction. Sgt. Caban then began to lead § 87(2)(b) towards the van "aggressively," accelerating as he did so. As a result, the front of § 87(2)(b)'s body hit the van. After § 87(2)(b) was placed in handcuffs, the officers transported him to the stationhouse, where he was released with two summonses for being in a park after dusk and for engaging in disorderly conduct. A search of § 87(2)(b) was conducted at the command stationhouse, whereupon it was determined that he was not in possession of any drugs or weapons.

During his interview, Sgt. Caban was shown an ISAR report prepared by Cpt. Joseph Tompkins (Board Review 27). Sgt. Caban confirmed during his CCRB interview that he spoke to Cpt. Tompkins regarding this incident (Board Review 06). Sgt. Caban stated that he did not observe § 87(2)(b) hitting his face against the van, but after Cpt. Tompkins informed him of § 87(2)(b)'s injuries he speculated that he might have. Sgt. Caban did not observe § 87(2)(b)'s face making contact with the van.

Sgt. Caban was also shown photographs provided by IAB depicting bruising to § 87(2)(b)'s face following the incident (Board Review 29), but he did not recall whether the depicted person was § 87(2)(b) and stated that the markings did not look like anything that may have resulted from force used against § 87(2)(b) on the date of incident (Board Review 06).

§ 87(2)(g)
PO Molina alleged that the anonymous individual who approached the officers stated that there was a park up the street wherein there were kids "possibly using drugs" and that these kids "most likely" had weapons. The informant did not provide any additional information and did not specify any particular individuals who might have guns or drugs. After providing this information the individual, who never identified himself, left and headed in an unknown direction. PO Molina stated that officers never saw this individual again, but that they looked for him.

As the officers pursued § 87(2)(b) in their vehicle, PO Molina observed him adjust his "waist area." PO Molina stated in his experience that many individuals carry guns in this area, and indicated the movement § 87(2)(b) was making by reaching with both hands towards

the fly of his pants. PO Molina did not know if § 87(2)(b) was adjusting his pants to pick them up or because he had a weapon, and did not see if § 87(2)(b) had any objects in his pants or if § 87(2)(b)'s pants were sagging.

Upon catching up to § 87(2)(b) outside the § 87(2)(b), Sgt. Caban approached § 87(2)(b) followed shortly behind by PO Molina. § 87(2)(b) stated, "Go fuck yourself," as they approached, and continued to use profanity towards the officers throughout the entire incident. Sgt. Caban stated, "Let me see your hands." In response, § 87(2)(b) "kind of refused, and then [Sgt. Caban] went to grab him and he flared both hands up in the air." PO Molina clarified that § 87(2)(b) refused to comply with Sgt. Caban by "not immediately show[ing] his hands," and that "flaring" referred to § 87(2)(b) putting both hands in the air to avoid being frisked. Sgt. Caban grabbed one of § 87(2)(b)'s arms, at which time § 87(2)(b) broke free of Sgt. Caban's grip and threw both hands in the air again. PO Molina approached, grabbed § 87(2)(b)'s other arm, and assisted Sgt. Caban in bringing § 87(2)(b) to the van. § 87(2)(b) then put his hands in the air again to avoid being frisked. Sgt. Caban responded by grabbing § 87(2)(b) in an attempt to gain control, at which time § 87(2)(b) "flared" his arms again. After approximately the third attempt, Sgt. Caban grabbed § 87(2)(b) and put him against the van. § 87(2)(b) was walked to the van in a way that was not forceful, through the front part of § 87(2)(b)'s body did make contact with the van. The force of being brought to the van was not great enough to cause bruising to § 87(2)(b). § 87(2)(b) was being combative at this time by fidgeting around, and PO Molina stated, "He didn't want us to touch him."

PO Molina tried explaining to § 87(2)(b) in English and Spanish why § 87(2)(b) was stopped. § 87(2)(b) responded by continuing to curse at the officers, stating, "I'll kick your ass," and continuing to move his body to avoid being frisked. Because § 87(2)(b) had become combative, PO Molina stated that the officers had no other choice but to handcuff § 87(2)(b). As § 87(2)(b) continued to "flare" his arms in a manner that indicated that he wanted to fight the officers, PO Gomez approached and assisted in finally placing § 87(2)(b) in handcuffs. Prior to doing this, Sgt. Caban succeeded in doing a partial frisk on § 87(2)(b)'s waist area, while a full frisk on § 87(2)(b)'s waist area was performed by PO Molina after § 87(2)(b) was in handcuffs. Neither frisk led to the discovery of contraband. Once § 87(2)(b) was in handcuffs and realized that it was no longer possible to "flare" his arms, § 87(2)(b) calmed down enough for officers to transport him back to the command stationhouse.

§ 87(2)(g)
PO Tejada stated during his first CCRB interview that he only heard the anonymous informant state that there were individuals in the park after dusk, with no information pertaining to guns or drugs imparted (Board Review 08). PO Tejada stated during his second CCRB interview that there was no discussion among the officers pertaining to this individual and that officers did not look for him, contradicting PO Molina's statement (Board Review 09). At the time that the officers approached § 87(2)(b) outside the § 87(2)(b), PO Tejada observed § 87(2)(b) assume a "fighting stance," which he described as § 87(2)(b) "tens[ing] up" with his fists clenched together in front of his chest with the palms facing in (Board Review 08). PO Tejada saw this as he was approaching § 87(2)(b)'s friend

§ 87(2)(b) Sgt. Caban and PO Molina were about one or two feet away from § 87(2)(b) when they passed out of PO Tejada's field of vision, and PO Tejada did not see them make contact with § 87(2)(b). While interacting with § 87(2)(b), PO Tejada turned around when he heard a commotion coming from the officers and § 87(2)(b) at which time § 87(2)(b) was already in handcuffs.

During his CCRB interview, PO Gomez also only mentioned the anonymous informant stating that there were individuals in the park, and made no mention of guns or drugs being present (Board Review 10). PO Gomez stated that he could not hear the conversation with this informant. At the time he exited the vehicle outside the § 87(2)(b), PO Gomez observed a commotion occurring with Sgt. Caban and PO Molina, who were already attempting to apprehend § 87(2)(b). PO Gomez could not describe what was going on at this time and stated during his interview, "When I got out the vehicle, and I saw two officers trying to hold down somebody's hands, my only reaction was to run towards that location and assist them in controlling the situation. That's all I saw." The officers were able to gain control of § 87(2)(b)'s hands, at which time PO Gomez was able to place § 87(2)(b) in handcuffs. PO Gomez's statement was otherwise consistent with the other officers.



201707277_20180201_1541_DM.mp4

Surveillance video footage obtained from the § 87(2)(b) depicts § 87(2)(b) and § 87(2)(b) approaching and entering the § 87(2)(b) in a § 87(2)(g) from the Pontiac Playground (Board Review 12).



201707277_20180201_1542_DM.mp4

The same footage depicts the § 87(2)(b) and § 87(2)(b) exiting the bodega approximately forty seconds later, at which time § 87(2)(b) is depicted carrying what appear to be eggs in both of his hands. Please note that the original footage, attached to Board Review 01, is of a higher resolution than the SnagIt clips attached to this section, and can be reviewed to clarify the identity of these items. At 11:51:58 p.m., according to the timestamp visible in the recording, § 87(2)(b) can be seen discarding the eggs upon observing the approach of the officers' vehicle (Board Review 13).



201707277_20180201_1542A_DM.mp4

Although a SnagIt clip has been placed above capturing the portions of footage that depict force being used against § 87(2)(b), please note that the degraded video quality of this excerpt obscures decisive elements of the encounter (Board Review 14). For the purpose of analyzing this allegation, it is necessary to review the original footage (Board Review 01).

At 11:52:12 p.m. in the recording, Sgt. Caban and PO Tejada can be seen approaching § 87(2)(b) and § 87(2)(b). At 11:52:16 p.m., Sgt. Caban moves behind § 87(2)(b) and grabs § 87(2)(b)'s arm with his left hand, while his right arm is not visible. Sgt. Caban pushes § 87(2)(b) towards the red van, accelerating as they approach. At 11:52:17, § 87(2)(b) can be seen bracing his legs in a manner consistent with him trying to slow down or resist Sgt. Caban's attempt to lead him towards the van. At 11:52:19 p.m., § 87(2)(b) makes contact with the van with enough force to rattle the van's cabin. § 87(2)(b) can be observed moving his hands out in front of him, making contact with the red van at the level of his chest.

Sgt. Caban was presented with and asked questions about this footage during his CCRB interview. At 11:50:55 p.m., Sgt. Caban observed that § 87(2)(b) was not wearing a hooded sweatshirt as he had previously indicated (Board Review 06). At 11:52:19 p.m., Sgt. Caban stated that at this point, "I identified the individual that was running from the park. I lead him to the van, where I was met with resistance, so I applied pressure towards the van." With regard to what part of § 87(2)(b)'s body made contact with the van, Sgt. Caban stated, "It's exactly the way that I said."

PO Molina was also shown this footage during his CCRB interview (Board Review 07). Upon being questioned about the struggle he described during his statement, in which Sgt. Caban repeatedly lost and subsequently regained control of § 87(2)(b) as he "flared" his arms, PO Molina stated that he saw this happen during the incident, but that he did not observe this happening in the footage. PO Molina did not see Sgt. Caban using any force in the video.

NYPD Patrol Guide Procedure 221-02 states: "Force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody.... When appropriate and consistent with personal safety, members of the service will use de-escalation techniques to safely gain voluntary compliance from a subject to reduce or eliminate the necessity to use force" (Board Review 15).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

[REDACTED]

§ 87(2)(b), § 87(2)(g)

[REDACTED]

§ 87(2)(b), § 87(2)(g)

Allegation (B) Force: Sergeant Jose Caban used physical force against § 87(2)(b)

It is undisputed that Sgt. Caban punched § 87(2)(b)

During his CCRB interview, § 87(2)(b) stated that after he put out his hands to protect his face from hitting the parked van, Sgt. Caban turned § 87(2)(b) around and punched him twice in the face (Board Review 03).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b)'s medical records show that § 87(2)(b) was diagnosed with acute pain due to trauma and with an abrasion to the skin on the left side of his face. § 87(2)(b) made statements to medical personnel that were consistent with his CCRB statement and in which complained of being punched in the face by a member of the NYPD (Board Review 05).

Sgt. Caban stated that after leading § 87(2)(b) to the van, he then began to cuff § 87(2)(b)'s right hand (Board Review 06). Once his right hand was cuffed, § 87(2)(b) gave resistance by flailing his left arm and turning around. Sgt. Caban clarified that by “flailing,” he meant that § 87(2)(b) was moving his hand away from Sgt. Caban. Sgt. Caban still had a one-handed grip on § 87(2)(b)'s right hand and was trying to grab § 87(2)(b)'s left arm at this time. As he faced Sgt. Caban, § 87(2)(b) lowered his head towards Sgt. Caban's torso, which Sgt. Caban interpreted as an act of aggression. Aside from this and the other factors previously mentioned, § 87(2)(b) was not doing anything aggressive. A struggle ensued in the course of which PO Molina assisted Sgt. Caban in bringing § 87(2)(b)'s right arm around his back. To overcome § 87(2)(b)'s resistance, Sgt. Caban administered a closed fist strike to § 87(2)(b)'s rib area three to four times in succession. § 87(2)(b) did not intend to strike anywhere else on § 87(2)(b)'s body. Sgt. Caban may have struck § 87(2)(b) in other areas, but could not state where. No other officers used physical force against § 87(2)(b). Sgt. Caban's goal in using force was to achieve compliance and to arrest § 87(2)(b).

Sgt. Caban was presented with the TRI report he prepared with regard to this incident, which stated that § 87(2)(b) pushed and/or shoved officers during the incident (Board Review 28). Sgt. Caban stated that this did not refer to anything he had not already described in his interview, and specified that § 87(2)(b) was pushing and shoving when the officers were trying to gain control of his left hand (Board Review 06). When questioned about the statement in the ISAR prepared for this incident regarding § 87(2)(b) being struck one time, Sgt. Caban stated that he did not tell Cpt. Tompkins this (Board Review 06, 27).

PO Molina stated that Sgt. Caban did not punch § 87(2)(b) and noted that he was within three feet of Sgt. Caban with an unobstructed view of the interaction (Board Review 07). Neither

PO Tejada nor PO Gomez observed Sgt. Caban punching § 87(2)(b) (Board Review 08, 09)



201707277_20180201_1542A_DM.mp4

As noted in previous section, the degraded video quality of this excerpt obscures decisive elements of the encounter (Board Review 14). For the purpose of analyzing this allegation, please see the original footage (Board Review 01).

At 11:52:21 p.m., PO Molina can be observed approaching Sgt. Caban and § 87(2)(b) while Sgt. Caban moves § 87(2)(b)'s left arm up behind his back. At 11:52:21 p.m., § 87(2)(b) twists around so that he is facing Sgt. Caban and PO Molina. Both officers are standing immediately in front of § 87(2)(b) whose back is to the red van. § 87(2)(b) is briefly obscured by PO Molina's body, during which time his hat starts falling off of his head. Sgt. Caban can be seen punching § 87(2)(b)'s face, causing § 87(2)(b)'s head to move down and to the left. At 11:52:23 p.m., § 87(2)(b) ducks down, and his face and body become obscured by Sgt. Caban and PO Molina. PO Tejada can be seen taking § 87(2)(b)'s backpack in his right hand, and looking over his right shoulder. At 11:52:25 p.m., PO Gomez exits the police vehicle and assists Sgt. Caban and PO Molina in handcuffing § 87(2)(b).

Both Sgt. Caban and PO Molina were presented with and asked questions about this footage during their CCRB interviews. At 11:52:22 p.m., Sgt. Caban narrated, "I have his right arm, now I'm attempting to get the left arm and he's flailing." Sgt. Caban stated that he observed himself applying physical force towards § 87(2)(b) but did not see himself administer a strike with a closed fist. The video was replayed again from 11:52:18 p.m. until 11:52:23 p.m. Sgt. Caban did not know if he had already administered a rib strike at this time, but stated that it looked like they were administered after this point in the video. The video was resumed and paused at 11:52:43 p.m. Sgt. Caban then stated, "We were attempting to place him under arrest. That looks like Officer Molina and Officer Gomez." At this time in the video, PO Molina and PO Gomez can be observed handcuffing § 87(2)(b). Sgt. Caban did not observe the punches he administered during the incident, but stated that they had been administered in the intervening time.

The video was then played back from 11:52:19 p.m., at which time Sgt. Caban's attention was drawn to himself and § 87(2)(b)'s upper body. The video was paused at 11:52:23 p.m., at which time it was pointed out that § 87(2)(b) was initially standing upright and that his head had moved down. Sgt. Caban stated with regard to this movement, "He attempted to place his head into my torso, as I said." Viewing this footage did not aid in Sgt. Caban's recollection of any physical force he used against § 87(2)(b) and Sgt. Caban had nothing he wanted to add or amend regarding his initial statement. Sgt. Caban stated he was not aware of making physical contact with § 87(2)(b)'s head or punching § 87(2)(b) in the head.

PO Molina was also shown this footage during his CCRB interview (Board Review 07). PO Molina did not see Sgt. Caban using any force in the video. The video was replayed from

11:52:19 p.m. until 11:52:21 p.m., at which time the undersigned noted that § 87(2)(b) s head was positioned up. The video was replayed and then paused at 11:52:22 p.m., at which time PO Molina’s attention was drawn to a blurred movement on the screen and § 87(2)(b) s head, which was facing down. PO Molina stated that he had no idea how this happened. PO Molina stated he had no independent recollection of Sgt. Caban punching § 87(2)(b) . When asked if PO Molina’s memory was refreshed by watching this footage, PO Molina stated, “The only thing that it refreshes is the fact that § 87(2)(b) was being uncompliant [sic] and very combative.”

NYPD Patrol Guide Procedure 221-02 states: “Force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody.... When appropriate and consistent with personal safety, members of the service will use de-escalation techniques to safely gain voluntary compliance from a subject to reduce or eliminate the necessity to use force” (Board Review 15).

§ 87(2)(b), § 87(2)(g)
[REDACTED]

[REDACTED]

[REDACTED]

§ 87(2)(b), § 87(2)(g)
[REDACTED]

§ 87(2)(b), § 87(2)(g)

Allegation (C) Abuse of Authority: Police Officer Jose Tejada stopped an individual.

The investigation was unable to obtain a statement from § 87(2)(b) regarding this incident (Board Review 11). Among the parties who were interviewed by the CCRB, it is undisputed that § 87(2)(b) was observed by officers in a park after operating hours, and that he was subsequently stopped by officers at § 87(2)(b) Street after he fled.

PO Tejada stated during his initial CCRB interview that his intent in approaching § 87(2)(b) outside the § 87(2)(b) was to ask him why he was in the park and why he ran (Board Review 09). After PO Tejada determined § 87(2)(b) was fifteen years old, he proceeded to “warn and admonish him” and did not issue him a summons. In his second CCRB interview, PO Tejada stated that § 87(2)(b) was free to go throughout the interaction, but at various points referred to the interaction as a “stop” (Board Review 10). PO Tejada’s memo book entry for this incident begins with the statement: “Two males stopped after they were observed running from the Pontiac playground” (Board Review 26).

Section 1-03 of the Rules of the New York City Department of Parks and Recreation states with regard to individuals remaining inside a park after operating hours, “that such violation shall also constitute an offense (classified as a “violation” under the Penal Law)” (Board Review 15).

In United States v Singletary, 798 F.3d 55 [2d Cir 2015], the United States Court of Appeals for the Second Circuit addressed the question of whether individuals can be stopped upon having committed a violation, as opposed to a misdemeanor or felony. The Court answered in the affirmative (Board Review 16).

§ 87(2)(b), § 87(2)(g)

Allegation (D) Abuse of Authority: Police Officer Jose Tejada frisked an individual.

It is undisputed that PO Tejada observed § 87(2)(b) in the Pontiac Playground after dusk, and that § 87(2)(b) fled from the park upon being approached by officers. Both § 87(2)(b) and PO Tejada stated during their CCRB interviews that PO Tejada frisked § 87(2)(b) (Board Review 03, 10), and this is confirmed by video evidence (Board Review 17).

During his initial CCRB interview, PO Tejada characterized the vicinity of the Pontiac Playground as a “high crime area” (Board Review 09). PO Tejada did not suspect § 87(2)(b) or § 87(2)(b) of any crimes aside from being in a park after dusk at the time he approached these individuals. PO Tejada stated during his second CCRB interview that he frisked § 87(2)(b) during

the interaction for officer safety, and that PO Tejada determined from the frisk that § 87(2)(b) was not carrying any weapons (Board Review 10). When asked whether there were any specific factors that arose during the interaction that lead him to have a concern for safety, PO Tejada stated that he and his fellow officers routinely ask individuals that they stop if they have weapons and that, aside from the civilians fleeing from the park after dusk, there were no additional factors which led him to have concern regarding safety. PO Tejada further stated, “That’s a normal interaction with anyone that we stop on the street,” and his answers to specific questions about this encounter – “We do a frisk on the clothing”; “We just frisk for officer safety” – further suggest that PO Tejada routinely frisks individuals during street encounters.



201707277_20180207_1202_DM.mp4

Video footage depicts PO Tejada frisking § 87(2)(b) s rear pockets at 11:52:20 p.m. (Board Review 17).

In People v Carney, 58 NY2d 51 [1982], the New York Court of Appeals ruled that “[a] suspect may not be frisked by a police officer who has no knowledge of facts that would provide a basis for suspecting that the individual is armed or dangerous” (Board Review 24).

In People v King, 102 AD2d 710 [1st Dept 1984], the Supreme Court of New York, Appellate Division, First Department found that a frisk was permissible when an individual was observed gambling with dice in a public place (which is a violation), and subsequently fled inside of and refused the officer’s orders to exit a nearby supermarket. The Court reasoned that these actions “strongly suggested” this individual “was attempting to hide for an offense more serious than promoting gambling,” and thus that it was not unreasonable for the officer to fear this individual might be carrying a concealed weapon (Board Review 19).

§ 87(2)(b), § 87(2)(g)
[Redacted text block]

[Redacted text block]

[Redacted text block]

§ 87(2)(b), § 87(2)(g)

Allegation (E) Abuse of Authority: Police Officer Jose Tejada searched an individual.

It is depicted by video evidence, as well as affirmed by PO Tejada, that PO Tejada placed his hand inside § 87(2)(b)'s shorts or pockets during the interaction (Board Review 01, 09, 17). There are no civilian statements regarding this allegation.



201707277_20180207_1202_DM.mp4

Video footage clearly depicts PO Tejada frisking § 87(2)(b)'s rear pockets and, at 11:52:22 p.m., entering his front left pocket with his hand (Board Review 17).

PO Tejada initially stated that he did not recall whether he entered § 87(2)(b)'s pockets during the interaction, and stated that that he did not ask for consent to search § 87(2)(b) anywhere except for his bookbag (Board Review 09). PO Tejada was shown this footage and, in summarizing the events depicted, stated, "I asked him if he had any weapons, he said, 'No.' I frisked the bag, I searched the bag after he gave me consent. I gave him the bag back once he told me that he was fifteen, I told him just get out of here. Now I got my focus on, so I can walk over to the rest of the group." The footage was then rewound and paused at 11:52:22 minutes, at which point PO Tejada was asked to describe what he was doing with his hands at this time. PO Tejada stated, "I have my hands in his pants."

§ 87(2)(b), § 87(2)(g)

Allegation (F) Abuse: Police Officer Jose Tejada frisked an individual.

Allegation (G) Abuse: Police Officer Jose Tejada searched an individual.

Video evidence depicts PO Tejada handling § 87(2)(b)'s bag from 11:52:20 p.m. – 11:52:30 p.m. (Board Review 18). It is unclear whether he conducts an external pat down of the bag at this time. PO Tejada is clearly depicted placing his hand inside § 87(2)(b)'s bag at 11:52:32 p.m.



201707277_20180207_1204_DM.mp4

PO Tejada stated during his second CCRB interview that after conducting a frisk of any bags in a stopped individual's "grabable area" during a street encounter, he and his fellow officers will ask for consent to search those bags (Board Review 10). PO Tejada consistently stated during both his initial CCRB interview and his re-interview that he conducted an external pat down of § 87(2)(b)'s bag and felt an object that was between six and seven inches in length, "sturdy," which was skinny on top and "harder" and "rounder" near the bottom, and which Tejada believed to possibly be a knife (Board Review 09, 10). PO Tejada then asked for and received consent to search the bag. PO Tejada then opened the bag and determined there was not a weapon inside. § 87(2)(b)'s bag only contained school materials, and PO Tejada never determined what object he felt initially inside the bag. There are no civilian statements regarding this allegation.

NYPD Patrol Guide Procedure 212-11 states, "A police officer cannot 'frisk' a bag or item of personal property unless the officer has a reasonable suspicion that the person is armed and dangerous and the bag or item could contain a weapon and is within the person's reach" (Board Review 20).

§ 87(2)(b), § 87(2)(g)

Mediation, Civil and Criminal Histories

- This case was determined to be ineligible for mediation because § 87(2)(b) stated that she was planning on filing a lawsuit with regard to this incident.
- § 87(2)(b) has not been convicted of any crimes in New York City within the past ten years (Board Review 22).
- A FOIL request submitted to the New York City Comptroller's office determined that § 87(2)(b) has not filed a notice of claim pertaining to this incident as of November 28, 2017. A follow up FOIL request submitted on January 29, 2018 also returned negative results.

Civilian and Officer CCRB Histories

- This is § 87(2)(b)'s first complaint with the CCRB (Board Review 31).
- This is § 87(2)(b)'s sixth complaint with the CCRB (Board Review 30).
- Sgt. Caban has been a member of the NYPD for 15 years. In that time, he has been the subject of 52 allegations in 18 cases aside from this one. 19 of these allegations are for physical force. Substantiated allegations against Sgt. Caban have been noted below.
 - CCRB 200306533:

- Abuse - Refusal to provide name/shield number. CCRB disposition: Substantiated (Charges). NYPD disposition: Charge Dismissed.
 - Abuse – Retaliatory summons. CCRB disposition: Substantiated (Charges). NYPD disposition: Charge Dismissed.
 - Offensive Language – Race. CCRB disposition: Substantiated (Charges). NYPD disposition: Charge Dismissed.
- CCRB 200711818:
 - Abuse – Stop. Substantiated (Instructions). NYPD disposition: Substantiated (Instructions).
- CCRB 201706354:
 - Abuse – Vehicle search. CCRB Recommendation: Substantiated (Charges). No NYPD disposition noted.
- PO Tejada has been a member of the NYPD for two years. He has been the subject of no prior CCRB complaints.

Squad:

Investigator: _____

Signature	Print	Date
-----------	-------	------

Squad Leader: _____

Title/Signature	Print	Date
-----------------	-------	------

Reviewer: _____

Title/Signature	Print	Date
-----------------	-------	------